

CHILD WELFARE DEFINITIONS - ISSUES

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1. "Abuse" - Subsection 62A-4a-101(1)

Current definition:

- (1) (a) "Abuse" means:
 - (i) actual or threatened nonaccidental physical or mental harm;
 - (ii) negligent treatment;
 - (iii) sexual exploitation; or
 - (iv) any sexual abuse.
- (b) "Abuse" does not include:
 - (i) reasonable discipline or management of a child, including withholding privileges;
 - (ii) conduct described in Section 76-2-401; or
 - (iii) the use of reasonable and necessary physical restraint or force on a child:
 - (A) in self-defense;
 - (B) in defense of others;
 - (C) to protect the child; or
 - (D) to remove a weapon in the possession of a child for any of the reasons described in Subsections (1)(b)(iii)(A) through (C).

Issues:

- a. Including "negligent treatment" in the definition of abuse creates a circular definition with "neglect", which includes "mistreatment or abuse".
- b. "actual or threatened nonaccidental physical or mental harm" sounds strange. It makes it sound as if it is possible to threaten accidental harm.
- c. What does "sexual exploitation" mean? Is it the definition in 62A-4a-402? Does it include conduct that would constitute the crime of sexual exploitation of a minor (Section 76-5a-3)?
- d. What does "any sexual abuse" mean? Is it the definition in 62A-4a-402? Does it include conduct that would constitute sexual crimes listed in Title 76, Chapter 5, Part 4? What about: child bigamy, Section 76-7-101.5; incest, Section 76-7-102; lewdness or sexual battery, Section 76-9-702; lewdness involving a child, Section 76-9-702.5; or voyeurism, Section 76-9-702.7? What about incest or molestation as defined in Section 62A-4a-402?
- e. See comments under "severe neglect".

2. "Chronic physical abuse" - Subsection 62a-4a-101(6)

Current definition:

(6) "Chronic physical abuse" means repeated or patterned physical abuse.

Issues:

- a. What does "physical abuse" mean? Wouldn't it be more consistent to use the phrase "physical harm" or, better yet, to just say "repeated and patterned abuse" and change the term to "chronic abuse"?

3. "Chronic neglect" - Subsection 62A-4a-101(7)

Current definition:

(7) "Chronic neglect" means a repeated or patterned failure or refusal by a parent, guardian, or custodian to provide necessary care for a child's safety, morals, or well-being.

Issues:

- a. Why do we have a separate definition of neglect within this definition? Why don't we just say "repeated and patterned neglect"?

4. "Chronic emotional abuse" - Subsection 62A-4a-101(8)

Current definition:

(8) "Chronic emotional abuse" means repeated or patterned emotional abuse.

Issues:

- a. "emotional abuse" is not defined anywhere. Is there really a legal difference between "mental abuse" and "emotional abuse"? If not, then isn't this covered if we change "chronic physical abuse" to "chronic abuse" as suggested above (since abuse includes "mental harm" in the definition)?
- b. See comments under "severe neglect".

5. "Neglect" - Subsection 62A-4a-101(18)

Current definition:

- (18) (a) "Neglect" means:
- (i) abandonment of a child, except as provided in Part 8, Safe Relinquishment of a Newborn Child;
 - (ii) subjecting a child to mistreatment or abuse;
 - (iii) lack of proper parental care by reason of the fault or habits of the parent, guardian, or custodian;
 - (iv) failure or refusal of a parent, guardian, or custodian to provide proper or necessary subsistence, education, or medical care, including surgery or psychiatric services when required, or any other care necessary for the child's health, safety, morals, or well-being; or
 - (v) a child at risk of being neglected or abused because another child in the same home is neglected or abused.
- (b) The aspect of neglect relating to education, described in Subsection (18)(a)(iv), means that, after receiving notice that a child has been frequently absent from school without good cause, or that the child has failed to cooperate with school authorities in a reasonable manner, a parent or guardian fails to make a good faith effort to ensure that the child receives an appropriate education.
- (c) A parent or guardian legitimately practicing religious beliefs and who, for that reason, does not provide specified medical treatment for a child, is not guilty of neglect.
- (d) (i) Notwithstanding Subsection (18)(a), a health care decision made for a child by the child's parent or guardian does not constitute neglect unless the state or other party to the proceeding shows, by clear and convincing evidence, that the health care decision is not reasonable and informed.
- (ii) Nothing in Subsection (18)(d)(i) may prohibit a parent or guardian from exercising the right to obtain a second health care opinion.

Issues:

- a. What does "mistreatment" mean? This is a very vague term.
- b. Including "abuse" in the definition of neglect creates a circular definition with "abuse", which includes "negligent treatment".
- c. The definition of "neglect relating to education" should be changed to coordinate better with recent changes to the compulsory education law. I suggest the following:

"(b) The aspect of neglect relating to education, described in Subsection (18)(a)(iv), means that, after receiving a notice ~~[that a child has been frequently absent from school without good cause]~~ of compulsory education violation under Section 53A-11-101.5, or notice that the [child] parent or guardian has failed to cooperate with school authorities in a reasonable manner as required in Subsection 53A-11-

101.7(5)(a), a parent or guardian fails to make a good faith effort to ensure that the child receives an appropriate education."

6. "Severe neglect" - Subsection 62A-4a-101(21)

Current definition:

(21) "Severe neglect" means neglect that causes or threatens to cause serious harm to a child.

Issues:

- a. The definition of "abuse" refers to "physical or mental harm", the definition of "chronic emotional abuse" does not refer to "harm" at all, the definitions of "severe emotional abuse" and "severe physical abuse" refer to "serious harm" (whether caused or threatened), but do not specify the type of harm (physical, mental, emotional?), the definition of "severe neglect" refers to "serious harm", but does not specify a type of harm. The definition of "abused child" (Subsection 78-3a-103) refers to "physical or mental harm", but does not mention "emotional harm". This is inconsistent.

7. "Severe emotional abuse" - Subsection 62A-4a-101(24)

Current definition:

(24) "Severe emotional abuse" means emotional abuse that causes or threatens to cause serious harm to a child.

Issues:

- a. See comments under "severe neglect".

8. "Severe physical abuse" - Subsection 62A-4a-101(25)

Current definition:

(25) "Severe physical abuse" means physical abuse that causes or threatens to cause serious harm to a child.

Issues:

- a. See comments under "severe neglect".

9. "Child abuse or neglect" - Subsections 62A-4a-302(2) and 62A-4a-402(2)

Current Definition:

- (2) "Child abuse or neglect" means causing harm or threatened harm to a child's health or welfare.

Issues:

- a. Why don't we use the same definitions of abuse and neglect that are included in 62A-4a-101?
- b. How does someone "cause" threatened harm? This needs to be reworded.

10. "Harm or threatened harm" - Subsection 62A-4a-402(3)

Current definition:

- (3) "Harm or threatened harm" means damage or threatened damage to the physical or emotional health and welfare of a child through neglect or abuse, and includes but is not limited to:
- (a) causing nonaccidental physical or mental injury;
 - (b) incest;
 - (c) sexual abuse;
 - (d) sexual exploitation;
 - (e) molestation; or
 - (f) repeated negligent treatment or maltreatment.

Issues:

- a. This is the only definition that attempts to define "harm". It refers to "physical or emotional health and welfare". It refers to "mental injury" as a subset of these.
- b. Why is "molestation" used here, but not in the definition of abuse under 62A-4a-101?

11. "Molestation" - Subsection 62A-4a-402(5)

Current definition:

- (5) "Molestation" means touching the anus or any part of the genitals of a child or otherwise taking indecent liberties with a child, or causing a child to take indecent liberties with the perpetrator or another with the intent to arouse or gratify the sexual desire of any person.

Issues:

- a. Why don't we just include this in the definition of abuse in 62A-4a-101?

12. "Sexual Abuse" - Subsection 62A-4a-402(6)

Current definition:

- (6) "Sexual abuse" means acts or attempted acts of sexual intercourse, sodomy, or molestation directed towards a child.

Issues:

- a. What does "sexual abuse" mean? Is it the definition in 62A-4a-402? Does it include conduct that would constitute sexual crimes listed in Title 76, Chapter 5, Part 4? What about: child bigamy, Section 76-7-101.5; incest, Section 76-7-102; lewdness or sexual battery, Section 76-9-702; lewdness involving a child, Section 76-9-702.5; or voyeurism, Section 76-9-702.7? What about incest or molestation as defined in Section 62A-4a-402?
- b. Does "sodomy" refer to the common law definition, or does it mean the more expansive definition under Section 76-5-403.1?

13. "Sexual exploitation of a child" - Subsection 62A-4a-402(6)

Current definition:

- (7) "Sexual exploitation of a child" means knowingly employing, using, persuading, inducing, enticing, or coercing any child to pose in the nude for the purpose of sexual arousal of any person or for profit, or to engage in any sexual or simulated sexual conduct for the purpose of photographing, filming, recording, or displaying in any way the sexual or simulated sexual conduct, and includes displaying, distributing, possessing for the purpose of distribution, or selling material depicting a child in the nude or engaging in sexual or simulated sexual conduct.

Issues:

- a. Should we also state that this includes conduct that would constitute the crime of sexual exploitation of a minor (Section 76-5a-3), "regardless of whether the person is charged with or convicted of a crime?"

14. "Severe type of child abuse or neglect" - Subsection 62A-4a-1002(1)

Current definition:

- (1) (a) Except as provided in Subsection (1)(b), "severe type of child abuse or neglect" means:
 - (i) if committed by a person 18 years of age or older:
 - (A) severe or chronic physical abuse;
 - (B) sexual abuse;
 - (C) sexual exploitation;
 - (D) abandonment;
 - (E) medical neglect resulting in death, disability, or serious illness;
 - (F) chronic neglect;
 - (G) severe neglect;
 - (H) chronic emotional abuse; or
 - (I) severe emotional abuse; or
 - (ii) if committed by a person under the age of 18:
 - (A) serious physical injury, as defined in Subsection 76-5-109(1)(d), to another child which indicates a significant risk to other children; or
 - (B) sexual behavior with or upon another child which indicates a significant risk to other children.
- (b) "Severe type of child abuse or neglect" does not include:
 - (i) the use of reasonable and necessary physical restraint or force by an educator in accordance with Subsection 53A-11-802(2) or Section 76-2-401;
 - (ii) a person's conduct that:
 - (A) is justified under Section 76-2-401; or
 - (B) constitutes the use of reasonable and necessary physical restraint or force in self-defense or otherwise appropriate to the circumstances to obtain possession of a weapon or other dangerous object in the possession or under the control of a child or to protect the child or another person from physical injury; or
 - (iii) a health care decision made for a child by the child's parent or guardian, unless, subject to Subsection 62A-4a-1004(2), the state or other party to the proceeding shows, by clear and convincing evidence, that the health care decision is not reasonable and informed.

Issues:

- a. The definition should state "severe physical abuse or chronic physical abuse" instead of "severe or chronic physical abuse".
- b. Isn't "medical neglect resulting in death, disability, or serious illness" a subset of "severe neglect?" Why does it need to say both?

- c. Why is the definition of "serious physical injury" as defined in Subsection 76-5-109(1)(d) used for juvenile offenders instead of "severe physical abuse" as defined Subsection 62A-4a-101(25)?

15. "Abused child" - Subsection 78-3a-103(1)(a)

Current definition:

- (a) "Abused child" includes a child who:
- (i) has suffered or been threatened with nonaccidental physical or mental harm, negligent treatment, or sexual exploitation; or
 - (ii) has been the victim of any sexual abuse.

Issues:

- a. The language: "has suffered or been threatened with nonaccidental physical or mental harm" sounds strange. It makes it sound as if it is possible to threaten accidental harm.
- b. Including "negligent treatment" in the definition of "abused child" creates a circular definition with "neglected child", which includes "mistreatment or abuse".
- c. "negligent treatment" is not defined. Shouldn't it be the same as "neglect" in 62A-4a-101?
- d. What does "sexual exploitation" mean? Is it the definition in 62A-4a-402? Does it include conduct that would constitute the crime of sexual exploitation of a minor (Section 76-5a-3)?
- e. See comments under "severe neglect".
- f. What does "any sexual abuse" mean? Is it the definition in 62A-4a-402? Does it include conduct that would constitute sexual crimes listed in Title 76, Chapter 5, Part 4? What about: child bigamy, Section 76-7-101.5; incest, Section 76-7-102; lewdness or sexual battery, Section 76-9-702; lewdness involving a child, Section 76-9-702.5; or voyeurism, Section 76-9-702.7? What about incest or molestation as defined in Section 62A-4a-402?

16. "Neglected child" - Subsection 78-3a-103(1)(u)

Current definition:

- (u) (i) "Neglected child" means a child:
- (A) whose parent, guardian, or custodian has abandoned the child, except as provided in Title 62A, Chapter 4a, Part 8, Safe Relinquishment of a Newborn Child;
 - (B) whose parent, guardian, or custodian has subjected the child to mistreatment or abuse;
 - (C) who lacks proper parental care by reason of the fault or habits of the parent, guardian, or custodian;

- (D) whose parent, guardian, or custodian fails or refuses to provide proper or necessary subsistence, education, or medical care, including surgery or psychiatric services when required, or any other care necessary for health, safety, morals, or well-being;
- (E) who is at risk of being a neglected or abused child as defined in this chapter because another child in the same home is a neglected or abused child as defined in this chapter; or
- (F) whose parent permits the minor to reside, on a permanent or temporary basis, at the location of a clandestine laboratory operation.
- (ii) The aspect of neglect related to education, described in Subsection (1)(u)(i)(D), means that, after receiving notice that a child has been frequently absent from school without good cause, or that the child has failed to cooperate with school authorities in a reasonable manner, a parent or guardian fails to make a good faith effort to ensure that the child receives an appropriate education.
- (iii) A parent or guardian legitimately practicing religious beliefs and who, for that reason, does not provide specified medical treatment for a child, is not guilty of neglect.
- (iv) Notwithstanding Subsection (1)(u)(i), a health care decision made for a child by the child's parent or guardian does not constitute neglect unless the state or other party to the proceeding shows, by clear and convincing evidence, that the health care decision is not reasonable and informed.
- (v) Nothing in Subsection (1)(u)(iv) may prohibit a parent or guardian from exercising the right to obtain a second health care opinion.

Issues:

- a. Why don't we use the definition of "neglect" in 62A-4a-101?
- b. Including "mistreatment or abuse" in the definition of "neglected child" creates a circular definition with "abused child", which includes "negligent treatment".
- c. What does "mistreatment" mean? This is a very vague term.
- d. What is "proper parental care"? Maybe we should be more specific. "Necessary subsistence", which is also used, seems to make more sense. Maybe we should attempt to spell out what is expected, at a minimum, such as adequate food, clothing, shelter, medical care, and education (including the exceptions or clarifications for healthcare and education).
- e. The definition of "neglect relating to education" should be changed to coordinate better with recent changes to the compulsory education law. I suggest the following:
 - "(ii) The aspect of neglect relating to education, described in Subsection (1)(u)(i)(D), means that, after receiving a notice ~~[that a child has been frequently absent from school without good cause]~~ of compulsory education violation under Section 53A-11-101.5, or notice that the [child] parent or guardian has failed to cooperate with school authorities in a reasonable manner as required in Subsection 53A-11-101.7(5)(a), a parent or guardian fails to make a good faith effort to ensure that the

child receives an appropriate education."